

# Aboriginal entrepreneurship on reserves: Some empirical data from Northern Ontario and considerations following the Supreme Court of Canada decision on the Delgamuukw v. British Columbia appeal<sup>1</sup>

Jean-Charles Cachon

School of Commerce and Administration, Laurentian University of Sudbury

## Abstract

After a review of the general characteristics of Aboriginal businesses on Canadian reserves, the empirical part of this research compares a sample of 22 on-reserve businesses interviewed within four reserves in Northern Ontario to a control sample of 229 businesses from across Northern Ontario. Both samples were surveyed in Spring/Summer 1997 by the Small Business Research Group, from Laurentian University's School of Commerce and Administration.

The results confirmed the literature in showing a lack of structure, with 88% of the businesses unincorporated, a lack of capital, a sense of isolation and of being out of the information channels (a majority of respondents saw no benefits to networking), literacy problems among the population, and frustrations with government agencies.

However, as among other groups

in the Canadian business population, Aboriginal entrepreneurs were more educated than the general Aboriginal population. The remainder of the article discusses issues related to the development of entrepreneurship among the First Nations, including the Delgamuukw v. British Columbia decision by the Supreme Court of Canada and its potential effects.

## Introduction

Aboriginal business ownership in Canada is, at 3.9%, less than half the average of 7.9% (Statistics Canada, 1996 Census). While an Industry Canada report reveals a fast growth in the number of self-employed aboriginals (Sawchuk and Christie, 1998), there is a lack of research in this area.

The empirical part of this article is based upon interviews conducted with Aboriginal business people

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located on four different First Nation reserves of Northern Ontario during the spring and summer of 1997. Further to this survey, and in the context of the Supreme Court of Canada decision of December 11, 1997, on the *Delgamuukw v. British Columbia* appeal, a number of questions arise regarding the potential for business and economic activity on land vested with Aboriginal title. While the author has no claim to be an expert in Aboriginal law, the *Delgamuukw v. British Columbia* decision is regarded by First Nations and by others as potentially far-reaching in terms of economic consequences (McKnight, 1998, Davis and Company, 1999) and should not be left only to lawyers and magistrates to be argued about.

### **Review of the literature**

Aboriginal business is usually discussed in a macroeconomic way: Jankowski and Moazzani (1995) are mainly describing the overall situation of entrepreneurship in Northern Ontario, reporting, for example, a 4.13% level of self-employment among the Aboriginal population (against 8.5% and 7.7% for the Anglophone and Francophone populations). In a document also from 1995, a coalition of nine Aboriginal associations issued *Perspectives on*

*Aboriginal Economic Development in Ontario*, a paper presenting the effectiveness of the Jobs Ontario Community Action Aboriginal Program, or JOCAAP. It includes short case studies on the development of new Aboriginal businesses, including two located in Northern Ontario.

While recent Canadian empirical studies of Aboriginal business people were not to be found, a number of newspaper articles appear regularly in Canadian papers, even if in relatively small numbers (between 1993 and 1998, the Canadian Business and Current Affairs databank shows 112 references on Aboriginal Business out of 8,082 references about Business, or 1.4% only). A recent paper by Jordan (1997), a Toronto banker specialized in Aboriginal banking, describes Aboriginal business in general terms. According to her, Aboriginal self-employment in Canada would be an average of 7.8%, against 13.3% for the general population, both figures being high as compared to Ontario averages (the sources of these figures are not indicated). Jordan profiles Aboriginal businesses on reserves as predominantly sole proprietorships, home-based and under-capitalized/financed.

Similar comments were given to

the researcher by business people, Band officials, and Economic Development Officers: they believe the problems of Aboriginal, on-reserve businesses, are well known. These problems would, they believe, involve three main areas: financing, human resources, and taxes. Traditional bank financing is rarely possible: land titles are communal, i.e. collectively owned by Band members, and therefore cannot be secured as collateral by a single individual; secondly, the communal character of Aboriginal land title prevents First Nations from relinquishing such title unless it is surrendered to the Crown (*Delgamuukw v. British Columbia* [1997] 131); further, Band members own their business, but can only sell it to another band member, with the result of reducing even more the extent of possible bank financing. These problems were also reported by Chiste (1996) in a seminal textbook on Aboriginal business that includes some short case studies.

The native rights to tax exoneration on reserves (under section 87 of the Indian Act) are not completely clear in their application (Jules, 1997), particularly when it comes to businesses who sell both on and off-reserve. In 1995, Revenue Canada changed its criteria to

identify on-reserve property and some court challenges are still pending. Finally, the availability of skilled human resources is described by band officials as an endemic problem as high unemployment on reserves (25% according to Jordan, in Southern Ontario reserves, as high as 80%-plus in remote North-Western Ontario areas) forces people with an education to seek work outside reserves, thus creating a brain drain.

### Method

Research in Aboriginal settings cannot be conducted in the same way as it is in non-Aboriginal environments for cultural and geographical reasons. The settlements on a single reserve are often scattered and difficult to identify (only the band administration has detailed maps of residential areas), and each First Nation has a distinct culture and ways of dealing with outside researchers (Sawchuk and Christie report that on 77 reserves enumeration was not possible for the 1996 census). In 1998, the three Canadian Research Councils jointly adopted a policy statement on ethical conduct for research involving humans, which suggested the following "good practices" among Aboriginal communities:

"...respect the culture, traditions and knowledge of the aboriginal group; conceptualize and conduct research with aboriginal group as a partnership; consult members of the group who have relevant expertise; involve the group in the design of the project; examine how the research may be shaped to address the needs and concerns of the group; ... afford the community an opportunity to react and respond to the research findings..."

The procedure that was followed for this study consisted in a first visit by the researcher to the reserve, where an attempt to meet either the Economic Development Officer or the Chief, or a Band Council member would be made. At that meeting, the letter of presentation, the interview consent form and the questionnaire, as well as the objectives of the research, were presented by the researcher, who would then ask if these documents could be submitted to the Band Council or the Chief for approval, if required. In two cases, the person met by the researcher took upon her responsibility to allow the survey to proceed immediately; in the two other cases, the approval had to come from the Band Council. In one case, the researcher was

assisted by a band member.

The interviews were conducted between May 15th and July 4th, 1997. The overall response rate has been calculated by dividing the number of entrepreneurs who answered a questionnaire by the total number of entrepreneurs asked if they would agree to answer. It was found that, even if band administrations keep listings of businesses, it was difficult to locate all of them because many are home-based as well as seasonal: for example, entrepreneurs in the trucking business and construction business could never be reached as their activities were conducted outside the reserve. A total of 44 entrepreneurs were reached across the four reserves and asked to answer a questionnaire (according to Statistics Canada, there were 415 businesses on the reserves of Ontario in 1996, and 2,185 were off-reserve). They were told that this survey had been approved by the Band Council or its delegate and that the questionnaire had been approved. The number of questionnaires answered was 20, for an overall response rate of 45.5%.

#### **Instrument**

The questionnaire included 67 questions regarding the business in general as well as six main areas:

Markets and competition, Networking, Financing (start-up, current and financial performance), Personnel and training, Computer technology, and Small business support. Three questions were specifically addressing the on-reserve location aspect:

- 1) What problems or difficulties were related to being in business on a reserve;
- 2) Which specific services entrepreneurs would wish to see developed for businesses on reserves, and ...
- 3) How would it be possible to create more viable businesses on reserves.

#### **Data analysis**

The data obtained were analyzed with nonparametric statistical procedures in the SPSS package (the small size of the sample rendered impossible the use of parametric procedures). All the results reported below are statistically significant, while insignificant results are not reported. The results were compared to a control sample of 229 business people from Northern Ontario surveyed during the summer of 1997 (Mulholland *et al.*, 1998).

#### **Results**

88.9% of the aboriginal businesses surveyed were unincorporated (out of twenty, only one respondent reported an incorporated business, another one reported the business as being a cooperative), while 59.5% of the non-aboriginal businesses were incorporated. Aboriginal businesses were generally very small, with very few employees, and none of them was a franchise.

The types of businesses surveyed on the reserves include the primary sector (trapping, raising fur animals, and farming), one manufacturer, and, more often, the service and retail sector: gas stations and vehicle or equipment repair, furniture repair, chip stands, sceptic services, tourism activities (including marinas, lodges, and craft and souvenirs shops), and beauty salons. These results are consistent with the figures reported by Statistics Canada for 1996, where recreation and personal services involved 20.3% of Aboriginal self-employed people, construction 17.9%, and retail and wholesale trade 15.2%.

One of the respondents had business locations both on and off the reserve. The average age of the respondents was not different than among other groups, at 44 years. However, while the level of educa-

tion of Aboriginal business people was lower than among non-Aboriginals, they had a higher level of education than the general Aboriginal population (table 1). The fact that entrepreneurs are usually more educated than the general population is widely accepted in the literature (Gibb, 1987).

**Table 1**  
**Level of formal education:**  
**Aboriginal vs Non-Aboriginal entrepreneurs**

Groups	Primary	Secondary	Trade	College	University	Other
Aboriginal	15.8%	42.1%		36.8%	5.3%	
Aboriginal average	20%	42%		33%	5.0%	
Non-Aboriginal	2.8%	29.4%	15.2%	22.7%	28.4%	1.4%
Non-Aboriginal average	12%	37%		35%	16%	

*The Canadian averages shown above were reported by Sawchuk and Christie (1998) as results from the 1996 Census.*

In terms of financing, personal financing had often to replace unavailable bank financing due to a lack of collateral. Several businesses mentioned this problem as a hindrance to their growth. The absence of at least one financial institution on reserve territory was cited as another problem: reserve incomes are channeled out of the reserve to out-of-reserve financial institutions who are not gearing services specifically towards the needs of the smaller Aboriginal clientèle. Business owners mentioned the difficulty to

attract investors on a reserve: This is why many Band members and administrators advocate the creation of credit unions, and, possibly, investment clubs, on reserves, with a mandate to reinvest locally. The creation of an Aboriginal Business Service (possibly under the umbrella of Aboriginal Capital Corporations) located on reserves and administered in conjunction with Aboriginal Business Canada was also suggested (Cachon and Cotton, 1997); the service would help existing and potential entrepreneurs on the reserve

with business-oriented services (such as planning and training in specific business skills) and organize activities geared towards increasing Aboriginal entrepreneurship. Such services should be suited to the specific needs of each community, rather than involving pre-arranged programs.

Aboriginal business people on the reserves said they often felt isolated and out of the information channels. The availability, and conditions, of programmes for small business are not clear to them. For example, none of the respondents mentioned any knowledge of the existence of Aboriginal Capital Corporations. Another problem is the difficulty to network, particularly on the reserve itself, but also outside, and very few Aboriginal business people belong to organizations located "in town". In fact, a majority of the Aboriginal respondents saw no benefit to networking, while a majority of non-Aboriginal business people see networking as important for their business. Some authors actually consider networking as a condition for business success (Filion, 1991).

Geographical isolation and the small size of First Nation communities are also considered as a barrier to success by Aboriginal business people: it involves higher costs (due to

the impossibility for retailers to obtain large quantity discounts) and higher prices, while customers can shop at lower prices in communities outside the reserve. The limited territory of the reserve can also represent an obstacle to business development: for one farmer, the unavailability of more reserve territory for farming, meant having to purchase land outside the reserve at relatively high prices if the business was to grow.

The problems of literacy, and adequate commerce training, were also mentioned as "problems that must be addressed" before "giving out grants to Aboriginal people wanting to start-up a small business or other"; suggestions for training included teaching business people how to budget, give them advice about taxation, and counselling and helping them after start-up. Such training would be preferred to be in-house, similarly to non-Aboriginal settings. Some respondents suggested the creation of training centres or training activities on reserve territory, aimed at resident entrepreneurs or would-be entrepreneurs.

The need to develop role models of business people was expressed, as well as the persistence of social problems hampering the development of businesses: vandalism and jealousy

among Band members. While some business owners said that Economic Development Officers (E.D.O.) should be responsible for helping business, others observed that E.D.O.s were given too many responsibilities at managing or overseeing businesses owned and operated by the Band, and were not necessarily having time available to foster new economic activities and help either existing or new entrepreneurs. In spite of all the difficulties, one member commented that Aboriginal business people had to learn from scratch, as they had no role models in the older generations and could not benefit from the entrepreneurial spirit that exists among a higher proportion of non-Aboriginal business families or settings.

When commenting about direct government assistance, some respondents wondered what happened about the Aboriginal procurement policy adopted by the federal government in 1996. 61.1% of the Aboriginal respondents had received a significant government assistance in the past, from the following: Aboriginal Business Canada, Health Canada, Agriculture and Agri-Food Canada, Native Agriculture, FedNor, Northern Development and Mines, and Native Business. A few comments were made about the persis-

tence of "red tape" and the necessity for governments to "get their act together" and "make one set of regulations... as they currently are different everywhere". A study conducted in a non-Aboriginal region showed that only 44% of the respondents reported having received direct government assistance (Cachon and Cotton, 1997).

### **Discussion**

The empirical part of this study involved only aboriginal businesses located on reserves. It is worth noting that, according to Economic Development Officers, a number of Northern Ontario band members live off-reserve and operate successful businesses in Southern Ontario (particularly in the Toronto area). This type of "brain drain" is not different to what happens in the communities of Northern Ontario at large, but its effects on the smaller First Nations' communities is most probably more dramatic: when businesses with potential cannot be developed on a reserve, the only opportunities remaining are outside. There does not seem to be any simple solution to the current problems. However, despite these problems, some actions can be taken by First Nation communities themselves. For example, the creation of credit



unions, investment clubs or various types of peer funding would be a way to gather funds from Band members living both inside and outside reserves in order to finance business activities.

Peer funding, or "Loan circles" are the equivalent of the "tontines" found in Africa (Gnansounou, 1992): a group in which investors contribute a small amount each to help a business person (for example to purchase fabric to manufacture clothes, or to fund the purchase of inventory, or the purchase of a used car by a taxi cab driver), and receive their money back plus some interest after a few weeks or months. The advantage of loan circles is that no collateral is required, and the creditors are peers instead of "bankers".

The development of new forms of democracy among First Nations is also a sign that networking, on a social scale and for political purposes, might, and should, spillover into the Aboriginal business circles. For example, on June 7, 1996, the Grand Council of the Anishinabek Nation of Ontario passed Resolution 96/14, which establishes Women's Councils. On February 19, 1997, at a Special Chiefs Assembly in the Sault-Ste-Marie, there was a discussion about "putting the Chiefs, the Elders,

the Youth, and the Women along the same line"<sup>2</sup>. If this form of multi-chamber democracy was to be chosen, the empowerment given, for example, to women, would probably result in the creation of new businesses on reserves. In other words, despite many unfavorable conditions in the environment, the empowerment currently under way within the First Nations suggests that economic objectives are becoming a part of such change. The role of non-Aboriginal governments will then be to assist First Nations by developing manageable and workable agreements with them.

### **The Delgamuukw v. British Columbia appeal decision**

The legal environment of business in Canadian Aboriginal settings has been dramatically changed on December 11, 1997, when the Supreme Court of Canada rendered its decision on the Delgamuukw v. British Columbia appeal. The litigation between the province of British Columbia and the Gitksan and Wet'suwet'en hereditary chiefs was about title over a 58,000 square kilometres territory in the Hazelton area. After a first trial dismissed their claim, followed by a dismissal by a majority of the Court of Appeal of B.C., the

<sup>2</sup>Unsigned article (1997) "Chiefs eager to move forward on issues" *Anishinabek News*, 9, 3, p. 13.

Gitksan and Wet' suwet' en hereditary chiefs appealed to the Supreme Court of Canada. The Court heard the appeal as a claim for Aboriginal title and its content, protection (under section 35 (1) of the *Constitution Act*, 1982), and proof.

The Supreme Court found that Aboriginal title is not restricted to the "practices, customs and traditions which are integral to the distinctive cultures of Aboriginal societies" (*Delgamuukw v. British Columbia* [119]) and that it also "encompasses mineral rights, and lands held pursuant to Aboriginal title should be capable of exploitation, which is not a traditional use for those lands" (122). However, the Court is also clearly stating that the uses of land are limited to its sustainability for future generations and are, therefore, inalienable (125-129), unless Aboriginal peoples decide to exchange land with compensation from the Crown (132). The Court also recognizes that Aboriginal title is not entirely protected by the Constitution and can be infringed for developing agriculture, forestry, mining, and other economic activities (165) as long as there is compensation.

In terms of the proof of Aboriginal title, the Court accepts oral histories and oral traditions as a part of the

proof of title that was rejected by the B.C. courts (93-107). Such decision is going to have far reaching consequences in Aboriginal title cases of the future, oral tradition being known as an important part of the culture of First Nations, but also because that tradition is directly linked to geographical sites.

What are the consequences of the *Delgamuukw v. British Columbia* decision? While the judgment seems to balance the notion of Aboriginal title between the rights of Aboriginal peoples to be usufructuaries of the lands and the economic needs of the country as a whole, it establishes the right of First Nations to enter into almost any kind of economic activity. Does it also imply that First Nations can refuse a type of economic activity on land they have Aboriginal title to? The answer seems to be affirmative if such activity is legislated by a province against Aboriginal rights, as "a provincial law of general application could not..." (180) extinguish Aboriginal rights because such provincial law is then taken outside a province's jurisdiction. However, the judgment is also clear that the federal government has the power to legislate "Aboriginal rights in relation to land" (176) and has jurisdiction over Aboriginal title, on top of the constitutional responsibility

for protecting the Aboriginal peoples of Canada. In consequence, can the federal government compensate First Nations in exchange for land, including for the purpose of any type of economic use? Can the federal government sign treaties (such as NAFTA) that imply foreign access to Aboriginal land through the promise of guaranteed access natural resources such as natural gas (or is at least one section of NAFTA illegal?)?

It would be interesting to know how *Delgamuukw v. British Columbia* is going to affect situations like that of Inco in the Northern Labrador area: are the current land claims from the Inuit and Innu going to affect mining in the area? Can First Nations oblige the federal government to abide by the principle of sustainability of the land for future generations, or will they be forced to receive compensation for allowing destructive open-pit mining on their land? Can First Nations decide which type of economic activity they wish to involve themselves with?

### **Conclusion**

Whatever the answer to the questions above is, it seems that Aboriginal peoples in Canada are going to have more opportunities than ever to become self-employed

in the future. These opportunities are related to the growth of the population (according to the Royal Commission on Aboriginal Peoples, the Aboriginal population will increase by 52% between 1996 and 2016 compared to 22% for non-Aboriginals), the increase in compensatory payments from the federal government and from companies (through Impact and Benefits Agreements or IBAs), the increase in the participation rate of the Aboriginal population in the economy, and, last but not least, the potentially far-reaching consequences of the *Delgamuukw v. British Columbia* decision.

Finally, it is worth noting that First Nations are taking steps towards assuming a better control of their economic development. The adequacy between what really happens in the Aboriginal business world as compared to the collective economic dreams of the First Nations' leaders is far from being perfect, however, positive economic actions are taking place, as reported by Sawchuk and Christie.

### **Limits of the study and implications for further research**

The limits of this study include its limited geographic scope: only four

reserves of Northern Ontario were studied. A wider-ranging number of studies should be conducted in the future in order to identify possible discrepancies or gaps in business development between different Aboriginal communities. Another important objective would be to monitor the increase of Aboriginal business and trade activities longitudinally, both on and off-reserves. It is also to be expected that the empowerment of various groups such as Youth and Women within Aboriginal societies will result in an increased entrepreneurial activity in the future, particularly if legislation becomes more favorable. The issues in that latter area are complex and may be solved only in the long run.

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